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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 THE NORTHWESTERN MUTUAL
12 LIFE INSURANCE COMPANY, a
13 foreign corporation,

14 Plaintiff,

15 v.

16 RICHARD L. KOCH, an individual,

17 Defendant.

CASE NO. C08-5394BHS

ORDER GRANTING
DEFENDANT'S MOTION
FOR TRIAL BY JURY ON
THE ISSUE OF PUNITIVE
DAMAGES

18 This matter comes before the Court on Defendant's Motion for Trial by Jury on the
19 Issue of Punitive Damages. Dkt. 26. The Court has considered the pleadings filed in
20 support of and in opposition to the motion and the remainder of the file and hereby grants
21 the motion for the reasons stated herein.

22 **I. FACTUAL AND PROCEDURAL BACKGROUND**

23 On June 23, 2008, Plaintiff filed a complaint against Defendant seeking
24 declaratory judgment that it was entitled to rescind certain insurance contracts that it
25 issued to Defendant. Dkt. 1. Defendant counterclaimed that, among other things,
26 Plaintiff violated the Washington Insurance Fair Conduct Act ("IFCA"), RCW 48.30.015.
27 Dkt. 6 ¶¶ 43-45. On August 18, 2009, Defendant filed a Motion for Trial by Jury on the
28

1 Issue of Punitive Damages. Dkt. 26. On September 8, 2009, Plaintiff responded. Dkt.
2 30. On September 11, 2009, Defendant replied. Dkt. 31.

3 It is undisputed that the Court has jurisdiction over this matter based on diversity
4 of citizenship pursuant to 28 U.S.C. § 1332. The current issue before the Court arises out
5 of Defendant's claim that Plaintiff violated IFCA by unreasonably denying insurance
6 coverage for the disability insurance policy D1039334. In pertinent part, IFCA provides
7 as follows:

8 (1) Any first party claimant to a policy of insurance who is
9 unreasonably denied a claim for coverage or payment of benefits by an
10 insurer may bring an action in the superior court of this state to recover the
11 actual damages sustained, together with the costs of the action, including
12 reasonable attorneys' fees and litigation costs, as set forth in subsection (3)
13 of this section.

14 (2) The superior court may, after finding that an insurer has acted
15 unreasonably in denying a claim for coverage or payment of benefits or has
16 violated a rule in subsection (5) of this section, increase the total award of
17 damages to an amount not to exceed three times the actual damages.

18 RCW 48.30.015. Defendant requests a ruling that he is entitled to a jury on RCW
19 48.30.015(2).

20 A more complete factual and procedural background is contained in the Court's
21 order of partial summary judgment. Dkt. 48.

22 **II. DISCUSSION**

23 In 2007, the Washington Legislature enacted RCW 48.30.015(2) allowing
24 insureds, in certain circumstances, a right to increased "damages." The statute provides
25 that the "court may" increase the damages. Neither party disputes that the statute directs
26 the judge to determine the amount, if any, of increased damages. The Court agrees with
27 this interpretation. Thus, if this action were tried in state court, the instant issue would be
28 moot. The question before the court, however, is whether, under the Seventh
Amendment, an insured has a right to a jury on the issue of increased damages when a
claim under RCW 48.30.015 is brought in federal court. The Court is unaware of any
binding or persuasive precedent resolving an apparent inconsistency between the
Washington statute and the Seventh Amendment.

1 Because the Court's jurisdiction in this action is based on complete diversity, the
2 Court must engage in a three-part choice-of-law analysis to determine whether Defendant
3 is entitled to a jury. *Hanna v. Plumer*, 380 U.S. 460, 470-74 (1965). If there is a valid
4 Federal Rule of Procedure on point, then the court must follow federal law. *Id.* at 473-
5 474 ("To hold that a Federal Rule of Civil Procedure must cease to function whenever it
6 alters the mode of enforcing state-created rights would be to disembowel either the
7 Constitution's grant of power over federal procedure or Congress' attempt to exercise that
8 power in the Enabling Act.").

9 If there is no direct conflict, the Court must follow the *Erie* doctrine and apply
10 state law on substantive issues and federal law on procedural issues. *Id.* at 468 (citing
11 *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)). The Court's review of the
12 substantive or procedural nature of the state law in question must be informed by "the
13 twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of
14 inequitable administration of the laws." *Id.* Finally, the Court must consider whether an
15 overriding federal interest requires application of federal law despite the substantive
16 nature of the state law in question. *See Byrd v. Blue Ridge Rural Elec. Coop.*, 356 U.S.
17 525, 537-39 (1958).

18 In this case, Defendant argues that Fed. R. Civ. P. 39 is "on point." Dkt. 31 at 3.
19 Rule 39 provides that "[w]hen a jury trial has been demanded under Rule 38, . . . trial on
20 all issues so demanded must be by jury unless . . . the court, on motion or on its own,
21 finds that on some or all of those issues there is no federal right to a jury trial." Rule 38
22 provides that the "right of trial by jury as declared by the Seventh Amendment to the
23 Constitution . . . is preserved to the parties inviolate." The Court agrees that Rule 39 is
24 "on point" if the Seventh Amendment provides the individual right to a trial by jury on
25 the issue punitive damages.

26 The Seventh Amendment provides as follows:

27 In Suits at common law, where the value in controversy shall exceed
28 twenty dollars, the right of trial by jury shall be preserved, and no fact tried

1 by a jury, shall be otherwise re-examined in any Court of the United States,
2 than according to the rules of the common law.

3 U.S. Const. amend VII. The Court is unaware of any Supreme Court or Ninth Circuit
4 case that directly holds that the “right to jury” clause of the Seventh Amendment includes
5 the issue of punitive damages. In fact, the Supreme Court has stated that the “Seventh
6 Amendment is silent on the question whether a jury must determine the remedy in a trial
7 in which it must determine liability.” *Tull v. United States*, 481 U.S. 412, 425-426
8 (1987). The Court also stated that “[n]othing in the Amendment’s language suggests that
9 the right to a jury trial extends to the remedy phase of a civil trial.” *Id.* at 426, n. 9.

10 There is, however, a separate line of cases on the scope of the Seventh
11 Amendment. The Third Circuit, in interpreting an almost identical Pennsylvania statute,
12 found “*Tull* inapposite” to the question of whether the Seventh Amendment provides a
13 right to a jury trial on the issue of punitive damages. *Klinger v. State Farm Mut. Auto.*
14 *Ins. Co.*, 115 F.3d 230, 235-236 (3rd Cir. 1997). The court reasoned that

15 the appropriate precedent is [*Curtis v. Loether*, 415 U.S. 189, 192 (1974)],
16 in which the Court held that a “damages action under [42 U.S.C. § 3612]
17 . . . is analogous to a number of tort actions recognized at common law.
18 More important, the relief sought here-actual and punitive damages-is the
19 traditional relief offered in the courts of law.” *Id.* at 195-96. Thus, we
20 conclude that the punitive damages remedy in a statutory bad faith action
21 under [the Pennsylvania statute] triggers the Seventh Amendment jury trial
22 right, a result consistent with several [Pennsylvania district court] cases that
23 have decided the issue.

24 *Klinger*, 115 F.3d at 236.

25 In this case, the Court finds that the *Klinger* reasoning is persuasive because the
26 Supreme Court has recognized that “punitive damages” are a type of “traditional relief
27 offered in the courts of law.” *Curtis*, 415 U.S. at 195. The Seventh Amendment
28 preserved the right to a jury on these traditional types of relief. *Id.* at 195-196.

Plaintiff, however, contends that the Seventh Amendment is not implicated
because increased damages under RCW 48.30.015(2) are not “punitive” damages. Dkt.
30 at 10. This argument is not persuasive. While it is true that there is no common law
right to punitive damages in Washington, *see, e.g., Dailey v. North Coast Life Ins. Co.*,

1 129 Wn.2d 572, 575 (1996), the Washington Supreme Court's "long-standing rule
2 prohibit[s] punitive damages *without express legislative authorization.*" *Id.* (emphasis
3 added). By enacting RCW 48.30.015(2), the Washington legislature expressly authorized
4 an award of up to three times actual damages. Moreover, the *Dailey* court recognized that
5 the "increased damages" language contained in a different statute was an explicit
6 authorization of punitive damages. *Dailey*, 129 Wn.2d at 577 (citing RCW 19.86.090
7 ("the court may, in its discretion, increase the award of damages up to an amount not to
8 exceed three times the actual damages sustained")). Therefore, the Court finds that RCW
9 48.30.015(2) is an express authorization of punitive damages.


10 Because the Seventh Amendment provides that a party in federal court is entitled
11 to a jury on the issue of punitive damages, Federal Rules of Civil Procedure 38 and 39 are
12 on point for the issue of whether Defendant is entitled to a jury on his claim for increased
13 damages under RCW 48.30.015(2). If there is a valid Federal Rule of Procedure on point,
14 then the court must follow federal law. *Hanna*, 380 U.S. at 473-474. The Court is bound
15 by the Federal Rules of Procedure and need not consider the remaining elements of the
16 choice of law analysis.

17 III. ORDER

18 Therefore, it is hereby

19 **ORDERED** that Defendant's Motion for Trial by Jury on the Issue of Punitive
20 Damages (Dkt. 26) is **GRANTED**.

21 DATED this 9th day of November, 2009.

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24 
25 BENJAMIN H. SETTLE
26 United States District Judge
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